

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JACOB MCCORMICK,

Petitioner,

v.

NEIL TURNER,

Respondent.

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CASE NO. 3:21-cv-01743

ORDER

JAMES S. GWIN, UNITED STATES DISTRICT COURT JUDGE:

Petitioner Jacob McCormick has filed a habeas petition. McCormick initially filed his petition under 28 U.S.C. § 2241. Although described as a 28 U.S.C. § 2241 petition, because McCormick challenges a state conviction, not a federal conviction, he should have petitioned under 28 U.S.C. § 2254. “§ 2254 is the ‘exclusive vehicle’ of habeas relief for prisoners in custody under a state judgment.”¹ The Court therefore advises McCormick that the Court will consider McCormick’s § 2241 petition as a § 2254 petition.

One effect of recharacterizing McCormick’s petition as a § 2254 petition is that subsequent § 2254 petitions will be subject to the 28 U.S.C. § 2244 limits on “second or successive” petitions.

Considering these limits, and because McCormick is pro se, the Court gives McCormick the option to amend his petition to include any other § 2254 claims he believes he has.²

¹ *Saulsberry v. Lee*, 937 F.3d 644, 647 (6th Cir. 2019) (citations omitted).

² *Martin v. Overton*, 391 F.3d 710, 713–14 (6th Cir. 2004) (requiring notice before a court can recharacterize a pro se filing as a § 2254 petition); *cf. Castro v. United States*, 540 U.S. 375, 383 (2003) (before recharacterizing a federal prisoner’s motion as a § 2255 motion, courts must provide notice of the consequences and an opportunity to amend the motion).

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McCormick must file any amended petition within **thirty (30) days** of this order. If McCormick does not amend his petition by that deadline, the Court will treat McCormick's currently-pending petition as a § 2254 petition and proceed to consider the Magistrate Judge's report and recommendation and McCormick's objections to those recommendations.

IT IS SO ORDERED.

Dated: November 28, 2023

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE